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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,412	08/24/2001	Jerry L. Aikins	ZIM0090	4304

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BAKER & DANIELS
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FORT WAYNE, IN 46802

EXAMINER

PRIDDY, MICHAEL B

ART UNIT	PAPER NUMBER
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3732

12

DATE MAILED: 05/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/939,412

Applicant(s)

AIKINS ET AL.

Examiner

Michael B Priddy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 13-42 is/are pending in the application.
4a) Of the above claim(s) 17-29 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-5 and 13-16 is/are allowed.
- 6) ☒ Claim(s) 6,7 and 30-42 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 20010824.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 6 and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Getscher et al. (U.S. 3,824,995). Getscher et al. teaches a bone plate, comprising: a plate portion 18/20 and a blade portion 24 extending from one another at an angle and connected to one another at a bend, said blade portion including a blade end opposite said angle, said blade end having a blade edge 26, said bend having a radius defined intermediate said plate portion and said blade portion, said radius dimensioned such that, with said plate portion resting against an outer surface of a bone and said blade portion extending into the bone, said radius fits closely adjacent the outside surface of the bone.

Claims 30-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Gotfried (US 5,429,641). Gotfried teaches a bone plate having elongated plate 1 and blade (2 portions disposed at an angle with respect to one another, said plate portion 1 having a plurality of holes 7 therein; an insertion guide member 47 detachably securable to said plate portion of said bone plate; and a screw guide 43 detachably securable to said insertion guide member in alignment with one of said plurality of holes in said plate portion; wherein said screw guide further includes a screw guide member III (strut screw guide member / top screw guide member) disposed at an angle with respect to each of

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said blade and plate portions and through which a strut screw II (top screw) may be inserted; said kit further comprising a strut screw II (top screw) insertable through said guide member and said one of said holes 7 in said plate portion 1; further including a handle member 21 engageable with said screw guide III and said insertion guide member 20 for detachably securing said screw guide III and said insertion guide member 20 to one another.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 7 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Getscher et al. as applied to claim 6 above, and further in view of the following. Getscher et al. discloses the claimed invention except for the radius defined intermediate said plate portion and said blade portion being .25 inches or less. It would have been an obvious matter of design choice to one skilled in the art at the time the invention was made to construct the bone plate of Getscher et al. such that the radius defined intermediate said plate portion and said blade portion was .25 inches or less, since applicant has not disclosed that such solves any stated problem or is anything more than one of numerous shapes or configurations a person ordinary skill in the art would find obvious for the purpose of providing an angle between two portions of a bone plate. In re Dailey and Eilers, 149 USPQ 47 (1966).

Response to Arguments

Applicant's arguments with respect to claims 6 and 7 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments with respect to claims 6 and 7 have been considered but are not persuasive. In response to applicant's argument that element 47 of Gottfried is not directed to an insertion guide member and that element 43 of Gottfried is not a screw guide member, it is noted that the law of anticipation does not require that the reference "teach" what the subject patent teaches, but rather it is only necessary that the claims under attack "read on" something in the reference. *Kalman v. Kimberly Clark Corp.*, 218 USPQ 781 (CCPA 1983). Furthermore, the manner in which a device is intended to be employed does not differentiate the claimed apparatus from prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Allowable Subject Matter

Claims 1-5 and 13-16 are allowed.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael B. Priddy whose telephone number is (703) 308-8620. The examiner can normally be reached on Mon.-Fri. 8 a.m. - 5 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (703) 308-2582. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael B. Priddy
Michael B. Priddy
April 19, 2004

Kevin Shaver
KEVIN SHAVER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700